

MT LEGISLATIVE HISTORY

Chapter 375 19 83

Bill H 603 S _____

Original bill & hist. ✓ C

H. Committee on Lab. & Emp. Rel.

S. Committee on Lab. & Emp. Rel.

Hearing Date(s) _____ C

Hearing Date(s) _____ C

2/10 ✓ C

3/19 ✓ C

2/17 ✓ C

3/19 ✓ C

Date Out 2/17 _____ C

3/19 ✓ C

Did this bill originate in an interim committee? ____ Yes X No

Committee _____

Report _____

1 *Falvey* *House* BILL NO. *603*

2 INTRODUCED BY *Reck* *Hemstad* *Nelson* *Gardle*

3 *O'Connell* *Blaylock* *Richard E. Manning*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE NUMBER OF *Doz*

5 HOURS WORKED BY FIREFIGHTERS TO BE THE SUBJECT OF COLLECTIVE *Remms*

6 BARGAINING; AMENDING SECTIONS 7-1-111, 7-33-4109, 39-3-406,

7 AND 39-4-107, MCA; AND REPEALING SECTIONS 7-33-4126,

8 7-33-4129, AND 7-33-4132, MCA."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 39-3-406, MCA, is amended to read:

12 "39-3-406. Exclusions. (1) The provisions of 39-3-404
13 and 39-3-405 shall not apply with respect to:

14 (a) students participating in a distributive education
15 program established under the auspices of an accredited
16 educational agency;

17 (b) persons employed in private homes whose duties
18 consist of menial chores such as babysitting, mowing lawns,
19 cleaning sidewalks;

20 (c) persons employed directly by the head of a
21 household to care for children dependent upon the head of
22 the household;

23 (d) immediate members of the family of an employer or
24 persons dependent upon an employer for half or more of their
25 support in the customary sense of being a dependent;

1 (e) any persons not regular employees thereof who
2 voluntarily offer their services to a nonprofit organization
3 on a fully or partially reimbursed basis;

4 (f) handicapped workers engaged in work which is
5 incidental to training or evaluation programs or whose
6 earning capacity is so severely impaired that they are
7 unable to engage in competitive employment;

8 (g) apprentices or learners, who may be exempted by
9 the commissioner for a period not to exceed 30 days of their
10 employment;

11 (h) learners under the age of 18 who are employed as
12 farm workers, provided that such exclusion shall not exceed
13 a period of 180 days from their initial date of employment
14 and further provided that during this exclusion period wages
15 paid such learners may not be less than 50% of the minimum
16 wage rate established in this part;

17 (i) retired or semiretired persons performing
18 part-time incidental work as a condition of their residence
19 on a farm or ranch;

20 (j) any individual employed in a bona fide executive,
21 administrative, or professional capacity as these terms are
22 defined and delimited by regulations of the commissioner;

23 (k) any individual employed by the United States of
24 America.

25 (2) The provisions of 39-3-405 do not apply to:

-2- INTRODUCED BILL

HB 603

1 (a) an employee with respect to whom the United States
2 Secretary of Transportation has power to establish
3 qualifications and maximum hours of service pursuant to the
4 provisions of 49 U.S.C. 304;

5 (b) an employee of an employer subject to the
6 provisions of part I of the Interstate Commerce Act;

7 (c) an individual employed as an outside buyer of
8 poultry, eggs, cream, or milk, in their raw or natural
9 state;

10 (d) a salesman, partsman, or mechanic paid on a
11 commission or contract basis and primarily engaged in
12 selling or servicing automobiles, trucks, mobile homes,
13 recreational vehicles, or farm implements if he is employed
14 by a nonmanufacturing establishment primarily engaged in the
15 business of selling such vehicles or implements to ultimate
16 purchasers;

17 (e) a salesman primarily engaged in selling trailers,
18 boats, or aircraft if he is employed by a nonmanufacturing
19 establishment primarily engaged in the business of selling
20 trailers, boats, or aircraft to ultimate purchasers;

21 (f) an employee employed as a driver or driver's
22 helper making local deliveries who is compensated for such
23 employment on the basis of trip rates, or other delivery
24 payment plan, if the commissioner finds that such plan has
25 the general purpose and effect of reducing hours worked by

1 such employees to or below the maximum workweek applicable
2 to them under 39-3-405;

3 (g) an employee employed in agriculture or in
4 connection with the operation or maintenance of ditches,
5 canals, reservoirs, or waterways not owned or operated for
6 profit and not operated on a sharecrop basis and which are
7 used exclusively for supply and storing of water for
8 agricultural purposes;

9 (h) an employee with respect to his employment in
10 agriculture by a farmer, notwithstanding other employment of
11 such employee in connection with livestock auction
12 operations in which such farmer is engaged as an adjunct to
13 the raising of livestock, either on his own account or in
14 conjunction with other farmers, if such employee is:

15 (i) primarily employed during his workweek in
16 agriculture by such farmer; and

17 (ii) paid for his employment in connection with such
18 livestock auction operations at a wage rate not less than
19 that prescribed by 39-3-404;

20 (i) an employee of an establishment commonly
21 recognized as a country elevator, including an establishment
22 which sells products and services used in the operation of a
23 farm, if no more than five employees are employed by the
24 establishment;

25 (j) a driver employed by an employer engaged in the

business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; or

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1); or

~~(n) a firefighter if such provisions are in conflict with a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative."~~

Section 2. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. In cases of emergency when life or property is in imminent danger this subsection does not apply.

~~(2) For firefighters in cities of the first and second class, a workweek consists of a maximum of 46 hours during a 5-day week. The provisions of subsection (1) do not apply to firefighters if the provisions conflict with a provision in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.~~

(3) In counties where regular road and bridge departments are maintained, the county commissioners may,

1 with the approval of the employees or their duly constituted
2 representative, establish a 40-hour workweek consisting of 4
3 consecutive 10-hour days. No employee may be required to
4 work in excess of 8 hours in any one workday if he prefers
5 not to.

6 (4) Every person, corporation, stock company, or
7 association of persons who violates any of the provisions of
8 this section is guilty of a misdemeanor and upon conviction
9 thereof shall be punished by a fine of not less than \$100 or
10 more than \$600 or by imprisonment in the county jail for not
11 less than 30 days or more than 7 months or by both such fine
12 and imprisonment."

13 Section 3. Section 7-1-111, MCA, is amended to read:

14 "7-1-111. Powers denied. A local government unit with
15 self-government powers is prohibited the exercise of the
16 following:

17 (1) any power that applies to or affects any private
18 or civil relationship, except as an incident to the exercise
19 of an independent self-government power;

20 (2) any power that applies to or affects the
21 provisions of Title 39 (labor, collective bargaining for
22 public employees, unemployment compensation, or workers'
23 compensation), ~~or 7-33-4128, or 7-33-4129,~~ except that
24 subject to those provisions, it may exercise any power of a
25 public employer with regard to its employees;

1 (3) any power that applies to or affects the public
2 school system, except that a local unit may impose an
3 assessment reasonably related to the cost of any service or
4 special benefit provided by the unit and shall exercise any
5 power which it is required by law to exercise regarding the
6 public school system;

7 (4) any power that prohibits the grant or denial of a
8 certificate of public convenience and necessity;

9 (5) any power that establishes a rate or price
10 otherwise determined by a state agency;

11 (6) any power that applies to or affects any
12 determination of the department of lands with regard to any
13 mining plan, permit, or contract;

14 (7) any power that applies to or affects any
15 determination by the department of natural resources and
16 conservation with regard to a certificate of environmental
17 compatibility and public need;

18 (8) any power that defines as an offense conduct made
19 criminal by state statute or which defines an offense as a
20 felony or which fixes the penalty or sentence for a
21 misdemeanor in excess of a fine of \$500 or 6 months'
22 imprisonment or both such fine and imprisonment, except as
23 specifically authorized by statute;

24 (9) any power that applies to or affects the right to
25 keep or bear arms, except that it has the power to regulate

1 the carrying of concealed weapons;

2 (10) any power that applies to or affects a public
3 employee's pension or retirement rights as established by
4 state law, except that a local government may establish
5 additional pension or retirement systems;

6 (11) any power that applies to or affects the standards
7 of professional or occupational competence established
8 pursuant to Title 37 (professions and occupations) as
9 prerequisites to the carrying on of a profession or
10 occupation;

11 (12) any power that applies to or affects Title 87
12 (fish and game) or Title 75, chapter 7, part 1."

13 Section 4. Section 7-33-4109, MCA, is amended to read:

14 "7-33-4109. Supplementary volunteer fire department
15 authorized for cities of second class. (1) In addition to a
16 paid department, the city council, city commission, or other
17 governing body in cities of the second class may make
18 provision for a volunteer fire department.

19 (2) ~~(a) The volunteer fire department shall be exempt~~
20 ~~from obligations in 7-33-4126 set out as applying to the~~
21 ~~paid departments~~

22 ~~(b) Likewise, the~~ The city commission or governing
23 department shall be exempted as to compliance with ~~7-33-4126~~
24 ~~and 7-33-4128~~ insofar as the same may pertain to the said
25 volunteer fire department by way of penalties and

1 infringements.

2 (3) A volunteer is one who is an enrolled member of
3 the volunteer fire department and assists the paid fire
4 department; who is eligible to serve only on the board of
5 trustees of the fire department relief association of such
6 city (provided not more than three volunteer members are on
7 said board of trustees); but who shall not be entitled to
8 receive a service pension.

9 (4) The governing body of said city may at its
10 discretion pay an enrolled volunteer firefighter the minimum
11 of \$1 for attending a fire and a minimum of \$1 for each hour
12 or fraction of an hour after the first hour in active
13 service at said fire or returning any or all equipment to
14 its proper place.

15 (5) In the attending of fires, any volunteer shall act
16 and serve under the supervision of the chief of the paid
17 fire department."

18 NEW SECTION. Section 5. Repealer. Sections 7-33-4126,
19 7-33-4129, and 7-33-4132, MCA, are repealed.

-End-

HOUSE BILL NO. 603

INTRODUCED BY PECK, HEMSTAD, NILSON, YARDLEY, DRISCOLL,
O'CONNELL, BLAYLOCK, GAGE, R. MANNING, MCCALLUM,
BACHINI, DOZIER, KEMMIS, MENAHAN, HARPER, FEBREGA

IN THE HOUSE

February 1, 1983	Introduced and referred to Committee on Labor and Employment Relations.
February 17, 1983	Committee recommend bill do pass as amended. Report adopted.
February 18, 1983	Bill printed and placed on members' desks.
February 19, 1983	Second reading, do pass as amended.
February 21, 1983	Correctly engrossed.
February 22, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Labor and Employment Relations.
March 19, 1983	Committee recommend bill be concurred in. Report adopted.
March 22, 1983	Second reading, concurred in.
March 24, 1983	Third reading, concurred in. Ayes 49; Noes, 0.

IN THE HOUSE

March 24, 1983

Returned to House.

March 25, 1983

Sent to enrolling.

Reported correctly
enrolled.

STATUS SHEET
HOUSE LABOR AND
EMPLOYMENT RELATIONS COMMITTEE

Page 7

___ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 568	Extends the time for the use of Reed Act money as provided in section 192 of Public Law 97-248	1/29	Harper	2/10	DO PASS	2/10
HB 569	Allows state employees to pool a portion of their compensated sick leave days in a fund and to draw upon the fund if absence due to illness exhausts their sick leave	1/29	J. Brown	2/10	DO PASS Returned 2/19 TABLED	2/17 2/19
✓ HB 603	Allows the number of hours worked by firefighters to be the subject of collective bargaining	2/1	Peck	2/10	AND AS AMENDED DO PASS	2/17
HB 623	Prohibits retaliation against an employee by an employer because the employee has filed a complaint or participated in a proceeding under law, etc.	2/3	Driscoll	2/8	DO PASS	2/10
HB 655	Excludes line trucks and bucket trucks from the laws regulating hoisting engines	2/5	Harp	2/10	AND AS AMENDED DO PASS	2/15
HB 749	Provides for job sharing in state personnel positions; defines job sharing; encourages it; and requires a report	2/12	Hemstad	2/17	AND AS AMENDED DO PASS	2/19

Rep. Hannah asked how long sick leave can accululate. Ms. Konigsberg replied that there is no maximum amount. Mr. Schneider said if you quit or retire you get paid 25 percent of the value of the sick leave. He said seven to eight days a year are the average amount used. Rep. Dozier said he had accumulated about 1000 hours in fifteen years and that which was accumulated prior to 1971 is nonrefundable time.

Rep. Hannah expressed a concern that this could have a fiscal impact as the sick leave could be paid out at 100 percent whereas it might otherwise be only 25 percent. Mr. Schneider said it would but he felt it would be a savings over the long run. Rep. Addy suggested that the employees contribute all the hours they want but have it subject to a 50 percent discount. Ms. Konigsberg said the concept is for using this in extensive illnesses. She said it will not be used as frequently as the fiscal note indicates. She said she didn't know how the concept of 50 percent would work, but that it was unacceptable to her.

Chairman Williams said there is a question on the validity of the fiscal note. He suggested the sponsor of the bill get together with the researcher and possibly suggest another fiscal note.

Chairman Williams closed the hearing on this bill and opened the hearing on HB 603.

HOUSE BILL 603

REPRESENTATIVE RAY PECK, District 100, chief sponsor, said this was a bill that would allow the number of hours worked by fire-fighters to be the subject of collective bargaining. He said the problem surfaced in Havre when the Attorney General's opinion was sought to see if it were legal for firemen to work a 24 hour on and 72 hour off work schedule. The Attorney General found against it so they have had to work an eight hour day. The only exception is if there is a major conflagration and need firemen beyond that. He said he was approached by the local firemen to sponsor this bill. He said he had talked to city councilmen and was told that the 8-hour day was less efficient and more costly and they would like to get out of it. He then sent a letter to the persons chiefly concerned (Exhibit 4) and the responses encouraged him to sponsor HB 603. He said this bill cleans up the law by deleting some of the old sections that are in conflict and enables the firemen to negotiate at the local level to define hours of work. He went through the bill. He said Havre had to make the change since they had asked for the Attorney General's opinion, but some of the cities haven't made the change. Rep. Peck requested an amendment to make the bill effective on passage and approval and to change the title to reflect that.

RAY BLEHM, Montana State Firemen's association, spoke in support. He said this affects other cities besides Havre and was caused by the Attorney General's ruling. He said the Department of Labor had said they wouldn't push for compliance immediately so most cities' firemen have continued as usual, but it has affected some cities like Missoula and Lewistown and will affect all cities if this situation does not get corrected. He passed to the members an information sheet which is Exhibit 5; a news clipping is Exhibit 6; and a copy of the letter issued by Barry L. Hjort concerning the Attorney General's opinion is Exhibit 7, and a copy of the Attorney General's opinion is Exhibit 8.

TIM MacKAY, Havre Fire Department, spoke in support. He said he had been with the department for five years. He felt the hours should be negotiable.

ROBERT W. KEELER, Havre Fire Department, spoke in support. He said they had worked the 24 hours on 72 hours off for 12 years before the decree came down. He said it was due to a collective bargaining disagreement and this was just a way to get even. He said they have neighborhood support as they were able to get 2,000 registered voters to sign their petition and this would be about 50 percent of the voters of Havre. He said they run the ambulance service that covers about 4200 square miles and this way they have to get somebody from another shift to run this and so it costs extra (time and a half). He said the training program has been nil since the change and it used to be one of the best in the state.

MAE NAN ELLINGSON, Deputy City Attorney for the City of Missoula, spoke as an amender. She said they would prefer HB 281 as it deals with all employees. A copy of her testimony is Exhibit 9 of the minutes. A copy of her suggested amendments is Exhibit 10.

BILL VERWOLF, City of Helena, agreed with the preceding witness that the bill should cover more than firefighters. He felt both HB 281 and HB 603 should be looked closely at together and provide what the firefighters want. He said they support the amendments presented by Ms. Ellingson.

REPRESENTATIVE PECK, in closing, said firemen need to serve 24 hours a day while clerical work is thought of by the public as an 8 to 5 thing to do. He said they wouldn't want to endanger this bill by amending the other people in. He said they are trying to correct a very specific problem that pertains to firemen.

Questions were asked by the committee.

Mr. Blehm responded to a question that the Attorney General's opinion only spoke to general government power cities. He alluded to the possibility that the others might not have to pay attention to this. He said it is the employees protection law that is being dealt with and it has never been tested or ruled on before. She said you could take the firemen and police out of 281.

EXECUTIVE ACTION

HOUSE BILL 525 Rep. Harper moved to amend title, line 7, following "BONA FIDE" to insert "COLLECTIVE BARGAINING AGREEMENT" and the same amendment on page 1, line 22 and again on line 15. This motion carried with Rep. Addy voting no. Rep. McCormick moved that HB 525 AS AMENDED DO PASS.

Rep. Addy said he opposed the amendment because the words bona fide seniority system come out of the regular employment discrimination law. In court cases and in federal regulations, amendment is not necessary and if you have a bona fide seniority system for employees, it is a nonaffirmative action bill. Any past discrimination is clarified into the system until replaced by attrition. He said it lends stability to the working place, but it limits the extent to which you can engage in affirmative action.

The question was called and the motion carried. Rep. Ellerd voted no and absent now were Reps. Bachini, Driscoll, Hannah, Jones, Seifert and Thoft. Rep. Ellerd said he voted no because he didn't understand the bill.

HOUSE BILL 554 Rep. Addy moved DO NOT PASS. He said he has a lot of frustration with the Human Rights Commission. He said the Department of Labor and Industry processes these complaints in sixty days and the Human Rights process takes six months to make an initial determination. He said it takes one and a half to two years before anyone has a right to go into district court. He said he realizes there might be overlapping processes that the employer said he has to live with. He said we would not be helping the employee to pass this.

Rep. Dozier asked if the bill is not passed will all the avenues still be open to the employee. Chairman Williams said it would close one avenue if we passed it and it would just go under the Human Rights Commission.

Chairman Williams asked if this would relieve the individual from hiring an attorney to get the job done. Rep. Addy said there would be an administrative hearing on both tracks but in and administrative procedure there is less need for an attorney.

HOUSE BILL 603: Information Sheet

Montana State Firemen's Association

1. Consolidates firefighter time and a half provisions, and the eight hour work day under the State Labor Code, and eliminates language from the Municipal Fire Department section of state law which covers the same subjects.
2. Relieves what has become an untenable situation in some of the states general government power cities which are causing their firefighters to work in strict adherence with the attorney general's ruling on Fire Department shifts in Havre, an employee is assigned the same days off and shift; requiring such shifts for an individual as perpetual afternoons with Sunday and Monday off--a man working this shift may only get to spend one day a week with his children.
3. Gives flexibility to the local government employee and employer representatives without removing important safeguards of the employee.
4. Reduces the possibility of a wage claim suit being filed against local government units.
5. Will help hold down cost by more efficient use of manpower.
6. Failure to pass this legislation could cause a disruption of the fire protection levels in cities which have not complied with the recent A G ruling being forced onto a straight eight hour shift, 40 hour week.
7. This would bring into question Local Government contract negotiated with fire department employees under the authority granted by the Montana Public Employees Collective Bargaining Act, which authorizes negotiation of hours.

Firemen, cities seek support for amendment on labor hours

by CHARLES S. JOHNSON
Tribune Capitol Bureau

HELENA — Lobbyists for firemen and cities, two groups often at odds, are working together to seek support for a bill to correct a problem they say a recent attorney general's opinion has caused.

If it isn't corrected, some Montana cities could wind up paying more for reduced fire protection, according to lobbyists for the Montana State Firemen's Association and League of Cities and Towns.

They fear Attorney General Mike Greely's opinion nullifies collective

bargaining agreements that allow firemen to work more than eight hours a day.

The lobbyists are trying to convince enough lawmakers that a simple amendment to the law would solve the problem.

If they drum up enough legislative support for the proposal, they will ask Gov. Ted Schwinden to expand his special session call to include their bill.

The problem arose with an opinion Greely issued to the city of Havre Oct. 7.

Greely held that work schedules

for firemen must conform to a state law stipulating that firemen in first- and second-class cities cannot work more than eight hours in a 24-hour period except in emergencies.

The opinion, which has the force of law, nullifies the working arrangements agreed to by firemen and some cities through collective bargaining, according to Ray Blehm, lobbyist for the firemen's group.

Dan Mizner, executive director of the Montana League of Cities and Towns, said local governments and firemen had taken the position that the law authorizing them to bargain collectively supersedes the statute cited by Greely.

It changes a mutually agreed upon interpretation of the law that has been held by some cities and fire departments for as long as a dozen years, according to an information sheet distributed by the groups.

Most cities have agreed to contracts with firemen that provide for more flexible shifts beyond eight-hour days and 40-hour weeks.

Bozeman, for example, has an agreement with its firemen for each to work two 24-hour shifts a week.

In Great Falls, the contract calls for firemen to work 42-hour work weeks, including 10-hour day shifts and 14-hour night shifts, Blehm said.

If Great Falls is required to obey the attorney general's opinion, each of the 70 firemen would be required to cut back two hours a week, which would reduce the total hours worked by 140 hours a week, according to Blehm.

"That's like cutting back three and one-half people," he said.

The net result might end up costing local governments more money by forcing the financially strapped cities to hire more firemen to make up the difference, Mizner said.

It might cost cities anyway because most firemen's contracts are negotiated on a monthly salary, according to the information sheet. Thus even though firemen's hours would be reduced, cities would be paying the same salaries.

"Failure to change this law could result in reduced fire protection and more manpower reductions on top of those experienced in recent years in many of our cities," the statement said.

Unless the law is changed to override Greely's opinion, cities and towns could be fined by the state Labor Department for allowing firemen to work more than eight hours, Blehm said.

Greely's opinion and the law don't affect cities with self-governing powers, which are Helena, Billings, Butte and Anaconda.

The proposed bill would amend the law to say it can be waived by collective bargaining agreements between cities and firemen.

Chances of the bill being introduced were uncertain late Wednesday.

Blehm said he and Mizner hope to convince the House Republican caucus to discuss the measure Thursday.

The proposal was discussed briefly at the meeting between Schwinden and House and Senate leaders Wednesday, but the matter was not resolved.

But Schwinden all but agreed to expand the call to include Rep. Jay Fabrega's bill to deal with delinquent taxes after the Great Falls Republican gathered more than 80 signatures supporting him. The formal document to expand the call had been drafted and the governor was waiting only for the report from Senate Republicans as to whether they would support the measure.

MONTANA

Provide bright spot around Missoula

la area because of layoffs and nt closures," he said.

Longtime Grizzly booster Al nuel of Alberton echoed Lewis' ments. Manuel, who has worked seasons in the Grizzly pressbox as atistician, says he's never seen the ssoula economy so tough. Manuel, railroader, was a victim of the Mil-akee Road closure last year who aged to pick up some part-time k with Burlington Northern.

But he and others with low senior- were laid off by BN recently. ere just isn't much freight mov- Manuel com ed.

Bud Munson reflected on his 20 years as a logger and mill employee in western Montana.

"You know, this is a dying business. I've seen it tough before...but never this bad."

Munson also offered his assessment of what's gone wrong: "It's the goddamn Forest Service and the goddamn environmentalists. And the politicians don't give a hoot either."

Some 3,900 persons were out of work in the Missoula labor market area at the end of September, according to State Department of Labor and Industry figures.

A. W. Scribner (1924-1978)
Lawrence D. Huss
Barry L. Hjort
R. Scott Currey
Dennis R. Lopach

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October 14, 1981

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Ron Lee
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Great Falls, MT 59401

Bob Armstrong
Fire Department
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Re: Attorney General's Opinion--Firefighters' Hours
of Work

Gentlemen:

Enclosed please find a copy of Attorney General's Opinion No. 35 of Volume No. 39, concerning firefighters' hours of work, issued to James W. Spangelo, City Attorney for the City of Havre, Montana.

A review of the Opinion reveals that the Attorney General concludes: that work schedules for firefighters must conform to the requirements set forth in 7-33-4126, MCA (that firefighters in first and second class cities must not be required to work on or be on duty more than 8 hours out of each consecutive 24 period except in the event of an emergency); and that a firefighter may receive comp time off for any additional bonus hours in excess of 40 hours in 1 week.

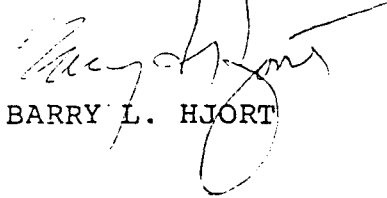
A review of the Opinion further reveals that the Attorney General has concluded that the provisions of 7-33-4126, MCA, are mandatory. That is, the 8 hour shift requirement cannot be waived by individual firefighters, nor can it be waived through the collective bargaining process. I will caution you, as the Attorney General does in the conclusion to his Opinion, that this conclusion only applies to municipalities with general government powers. The Attorney General does not purport to extend the determinations which he made in this Opinion to cities operating under self-government charters.

Richard Seddon
Ray Blehm
Ron Lee
Bob Armstrong
Page 2
October 14, 1981

The final conclusion of the Opinion is that comp time can be provided, through the device of a collective bargaining agreement or otherwise to provide compensation to fire-fighters who work in excess of 40 hours in a given work week.

After reviewing the Attorney General's Opinion and this letter, should you have any questions about the matter, do not hesitate to contact me.

Very truly yours,



BARRY L. HJORT

BLH/cr

Enc.

RECEIVED

OCT 09 1981

FIRE MARSHAL BUREAU

VOLUME NO. 39

OPINION NO. 35

FIRE DEPARTMENTS - Schedule of workshifts;

FIREFIGHTERS - Hours of work;

FIREFIGHTERS - Receipt of compensatory time off;

HOURS OF WORK - Repeal by implication of statutes providing criminal penalties for overtime work;

HOURS OF WORK - Firefighters;

STATUTES - Repeal by implication;

MONTANA CODE ANNOTATED - Title 7, Chapter 1, Part 1, 7-5-4101, 7-33-4126, 7-33-4129, 7-33-4132, Title 39, Chapter 3, Part 4, 39-4-107;

UNITED STATES CODE - 29 USC §201 et seq.;

OPINIONS OF THE ATTORNEY GENERAL - 36 OP. ATT'Y GEN. NO. 63 (1970) and 38 OP. ATT'Y GEN. NO. 63 (1980).

- HELD: 1. Work schedule for firefighters must conform to those set forth in 7-33-4126, MCA.
2. A firefighter may receive compensatory time off for bonus hours worked in excess of forty in one week.

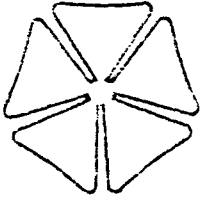
7 October 1981

James W. Spangelo, Esq.
City Attorney
P.O. Box 231
Havre, Montana 59501

Dear Mr. Spangelo:

You have requested my opinion on the following questions:

1. May a municipal fire department, with the consent of its employees, schedule firefighters to work shifts of 24 hours on duty followed by 72 hours off duty when such a schedule results in firefighters working more than eight hours in one day and forty hours



THE GARDEN CITY
HUB OF FIVE VALLEYS

Missoula, Montana 59802

OFFICE OF CITY ATTORNEY
201 West Spruce Street
Phone 721-4700

TO: Mel Williams, Chairman
Members of House Labor and Employment Relations

FROM: Mae Nan Ellingson
Deputy City Attorney

RE: HB -603

DATE: February 10, 1983

When the committee heard testimony on HB 281, the hours of work bill on January 25, 1982, it decided to hold that bill for consideration until the other hours of work bill was before the committee. HB 603 from what I understand is that other bill. The City can support HB 603 with an amendment and certainly the legislation is needed if HB 281 is not enacted. HB 603 will not be needed if 281 is passed and clearly 281 is the preferable bill for many reasons.

1. HB 603 allows only firefighters to work schedules other than five 3-hour days.

HB 281 would allow all County or City employees to agree to work schedules other than the statutorily mandated five 8-hour shifts. HB 603, while it is in specific response to Attorney General opinion No. 39-35, it is piecemeal legislation.

In 1979 the Legislature authorized County road and bridge crews to work four 10-hour days.

In 1981 the Legislature authorized the Sheriff's Department to establish a work period other than the work week provided in 39-3-405.

This session will be or is currently considering in separate legislation allowing nurses, police officers and firefighters to work shifts other than five 8-hour shifts.

If it is in the public interest to allow certain employees the right to agree to work more flexible work hours, why isn't it in the public interest to allow all City and County employees to do the same? It seems unfair to me that only those bargaining groups who can afford to have a lobbyist and get special dispensation through the Legislature are entitled to arrange more flexible hours of work. What about the secretaries, the clerks, the librarians, the city street workers, the sewer workers? Do you really want to encourage them to each seek introduction of their own legislation over the years until each conceivable category of worker has obtained a statutory exception?

That neither seems fair or a prudent use of legislative time.

2. HB 603 does not address the conflict between the law and Attorney General Opinion No. 38-83.

Most cities currently have any number of employees working four 10-hour shifts at a not insignificant risk. We are faced with openly defying the red letter of the law and exposing ourselves to a back pay claim for time and a half for hours worked in excess of 8 hours, or reverting back to five 8-hour shifts which would destroy worker morale and create inefficiencies in operation.

I would encourage you to pass 281, with the amendments I sent to you on February 7, 1983.

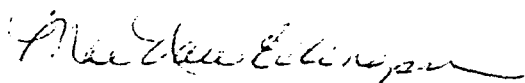
If HB 603 is the preferred bill of the committee, I recommend that it be amended in accordance with the amendment.

The purpose of this amendment is to use language consistent with language contained in the other exclusion provisions such as the sheriff's deputy exclusion in section (M). The intent of the bill as proposed by the firefighters is consistent with this change. Parallel statutory provisions are beneficial for future interpretation.

Also, the conflict language used in SB 603 raises an additional threshold question of whether there is a conflict between the statute and the agreement. Does the conflict have to be explicit or implied? Again, the purpose of the bill is to have Section 39-3-406 and 39-4-107 not apply where firefighters have bargained for other hours of work. The amendment that I have suggested accomplishes that.

Thank you for your consideration.

Very truly yours,



Mae Nan Ellingson
Deputy City Attorney



SUGGESTED AMENDMENTS TO HB 603

Page 5, Line 21

following: "a firefighter"

strike: "if such provisions are in conflict with"

Insert: "who is working under a work period established in"

Page 6, Line 20

Following: "firefighters"

Strike: "if the provisions conflict with a provision"

Insert: "who are working a work period established in"

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE MINUTES
February 17, 1983

The House Labor and Employment Relations Committee convened at 12 p.m. on February 17, 1983, in Room 224K of the State Capitol with Chairman Williams presiding and all members present except Rep. Seifert, who was excused. Chairman Williams opened the meeting to an executive session on the following bills:

EXECUTIVE SESSION

HOUSE BILLS 281 and 603 Rep. Dozier, chairman of the subcommittee that worked on these bills, said their original intent was to put one bill into the other and eliminate one. But, he said, the firefighters bill, 603, is a much cleaner bill and they felt it should stand on its own. He said the local government wanted its own bill and with the amendments to be suggested it would also be cleaned up and ready to go. He said HB 281 will allow public employers to negotiate with their employees to work something other than five 8-hour shifts. He said if they belong to a collective bargaining unit they will deal with it through that.

Rep. Dozier went through the bill showing what needed to be amended to remove firefighters from the bill. Rep. Harper moved to strike all references to firefighters from HB 281. This motion carried unanimously with those present, absent was Rep. Seifert.

Rep. Dozier passed copies of two sets of amendments to the members, Exhibit 1 and Exhibit 2 of the minutes.

Chairman Williams left to attend a Senate hearing and Vice-Chairman Dozier assumed the chair.

Rep. Miller moved the two sets of amendments with the researcher, Woody Wright, instructed to clean them up. This motion carried unanimously with those present.

Rep. Harper moved AND AS AMENDED DO PASS. This motion carried with Rep. Driscoll voting no and absent is Rep. Seifert. A yes vote was left by Chairman Williams.

Copies of the amendments for HB 603 were passed to the members, Exhibit 3. Rep. Miller moved the amendments be adopted and this motion carried unanimously with those present (Rep. Seifert, absent). Chairman Williams had left a yes vote.

Rep. Smith moved HB 603 AS AMENDED DO PASS. This motion carried unanimously with all present (same absent). Chairman Williams had left a yes vote.

SUGGESTED AMENDMENTS TO HB 603

Page 5, Line 21

following: "a firefighter"

strike: "if such provisions are in conflict with"

Insert: "who is working under a work period established in"

Page 6, Line 20

Following: "firefighters"

Strike: "if the provisions conflict with a provision"

Insert: "who are working a work period established in"

STANDING COMMITTEE REPORT

February 17, 1983

MR. **SPRAKER:**

We, your committee on **LABOR AND EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **603**

First reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE NUMBER OF HOURS
WORKED BY FIREFIGHTERS TO BE THE SUBJECT OF COLLECTIVE BARGAINING;
AMENDING SECTIONS 7-1-111, 7-33-4109, 39-3-406, AND 39-4-107, MCA;
AND REPEALING SECTIONS 7-33-4126, 7-33-4129, AND 7-33-4132, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **603**

be amended as follows:

1. Page 5, lines 21 and 22.

Strike: "if such provisions are in conflict with"

Insert: "who is working under a work period established in"

2. Page 6, line 20.

Strike: "if the provisions conflict with a provision"

Insert: "who are working a work period established"

AND AS AMENDED
DO PASS

~~XXXXXX~~
DO PASS

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

<u>HOUSE</u> BILL NO.	<u>ENTERED</u> COMM.	<u>DATE</u> CONSIDERED	<u>OUT OF</u> COMM.	<u>DO PASS</u> DATE	<u>DO NOT</u> PASS DATE	<u>DO PASS</u> AS AMEND. DATE	<u>BE CON-</u> CURRED IN DATE	<u>BE CONC. IN</u> AS AMENDED DATE	<u>BE NOT CON-</u> CURRED IN DATE
HB #406	2/14/83	3/17/83	3/24/83						3/24/83
HB #455	2/14/83	3/15/83	3/19/83				3/19/83		
HB #525	2/16/83	3/8/83	3/15/83					3/15/83	
HB #554	2/16/83	3/8/83	3/10/83				3/10/83		
HB #568	2/16/83	3/10/83	3/12/83				3/12/83		
✓ HB #603	3/1/83	3/19/83	3/19/83				3/19/83		
HB #623	2/16/83	3/10/83	3/12/83						3/12/83
HB #749	3/1/83	3/19/83	3/24/83					3/24/83	
HB #795	3/1/83	3/19/83	3/19/83				3/19/83		
HB #826	3/1/83	3/22/83	3/24/83					3/24/83	
HB #850	3/1/83	3/22/83	3/24/83						3/24/83

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 19, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on March 19, 1983, at 12:30 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL NO. 603:

Chairman Aklestad introduced Representative Ray Peck, sponsor of House Bill No. 603, to the Committee, and Representative Peck presented the bill to the Committee.

House Bill No. 603 is an act to allow the number of hours worked by firefighters to be the subject of collective bargaining.

Representative Peck stated that this bill allows for flexible hours as per agreement with the employer.

PROPOSERS OF HOUSE BILL NO. 603:

Essie Gebhardt, representing the Havre City Council, stated that they support House Bill 603. She submitted a letter to the Committee from Raymond Watson, the Mayor of Havre, stating that they, too, support House Bill 603. Mr. Watson's letter is attached. (Exhibit No. 1)

Timothy D. McKay, representing the Havre Fire Department, stated that they support House Bill 603. Mr. McKay submitted a letter to the Committee from Norman Maze, Chief of Havre Fire Department, in support of House Bill 603. This letter is attached. (Exhibit No. 2)

Kyle Olson, representing the city of Great Falls, stated that they support House Bill 603. Mr. Olson stated that this bill is supported by both management and labor, and it encourages efficiency in fire departments in the state of Montana as well as benefiting the taxpayers in the state.

Mike Walker, representing the Montana State Council of Professional Fire Fighters, stated that they support House Bill 603. They would like the flexibility.

OPPONENTS OF HOUSE BILL NO. 603: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 603:

Senator Goodover asked Kyle Olson if the fire fighters in Great Falls had been working 8 hours a day.

Kyle Olson responded that this bill would give them the ability to legitimize what they are doing.

Senator Lynch asked Representative Peck if this bill does the same thing that Dozier's bill does?

Representative Peck stated, "Yes, essentially it does". He further stated that there are cities in the state that were not complying with the law and this bill would allow them to be in compliance.

Senator Goodover asked why this bill couldn't have been included with the other bill.

Representative Peck stated that it probably could have been included with the other bill, but there are some points relating to firefighters that don't relate to the other bills.

CONSIDERATION OF HOUSE BILL NO. 749:

Chairman Aklestad introduced Representative Andrea Hemstad, sponsor of House Bill No. 749, to the Committee, and Representative Hemstad presented the bill to the Committee.

House Bill No. 749 is an act providing for job sharing in state personnel positions; defining "Job Sharing"; encouraging the use of job sharing to increase productivity and employment opportunities; and requiring a report on implementation of job sharing to the 49th legislature.

PROPOSERS OF HOUSE BILL NO. 749:

Celinda Lake, representing the Women's Lobbyist Fund, stated that they support House Bill No. 749. C. Lake's printed testimony is attached. (Exhibit No. 3)

Tom Schneider, representing MPEA, stated that they support House Bill 749. They feel job sharing increases productivity and that it is advantageous for the employer to do this and there is no additional cost to the employer.

Jan Gilman, representing ICCW, stated that they support House Bill 749. J. Gilman's printed testimony is attached. (Exhibit No. 4)

Mr. Hunter stated that this penalty and interest money goes to the Trust Fund and makes sure that employees get the interest benefits.

OPPONENTS OF HOUSE BILL NO. 795: None present at the hearing.

There were no questions from the Committee on House Bill 795.

Representative Ellerd made closing remarks in support of House Bill 795.

Chairman Aklestad called the hearing closed on House Bill 795.

ACTION ON HOUSE BILL NO. 795:

Senator Goodover moved that House Bill No. 795 Be Concurred In. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 795 BE CONCURRED IN.

Senator Gage will carry House Bill 795 on the floor.

ACTION ON HOUSE BILL NO. 749:

Senator Manning moved that House Bill No. 749 Be Concurred In.

There was further discussion by the Committee, and Senator Keating stated that this should be looked at very carefully.

Senator Goodover questioned the possibility that if an employee has a health problem could he be forced to job share?

Senator Lynch stated that he didn't think so.

Senator Keating stated that he would like to pass consideration on House Bill No. 749 for purposes of preparing some amendments.

The Committee agreed to take no action on House Bill No. 749 today.

ACTION ON HOUSE BILL NO. 603:

Senator Galt moved that House Bill No. 603 Be Concurred In. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 603 BE CONCURRED IN.

Senator Lynch will carry House Bill No. 603 on the floor.

ACTION ON HOUSE BILL NO. 384:

Senator Blaylock moved that House Bill No. 384 Be Concurred In. On a voice vote, the Committee voted 7-1 that HOUSE BILL NO. 384 BE CONCURRED IN. Senator Gage voted "no".

Senator Fuller will carry House Bill No. 384 on the floor.

STANDING COMMITTEE REPORT

March 19, 1983

MR. PRESIDENT:

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 603

Peck (Lynch)

Respectfully report as follows: That HOUSE Bill No. 603

BE CONCURRED IN
~~DO PASS~~